

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

Company Petition No. 98/ALD/ 2017

Company Application. 79/ALD/2017

(Under Section 230-232 of Companies Act, 2013)

IN THE MATTER OF:

M/S GANGETIC HOTELS PRIVATE LIMITED

REGISTERED OFFICE:

Mahmoodabad Estate Building,

15, Hazratganj, Lucknow-226001

.....Petitioner Company/Transferor Company

AND

M/S PALLADIUM CONSTRUCTIONS PRIVATE LIMITED

REGISTERED OFFICE:

R.R.Hosiery Building, Shri Laxmi Wollen Mills Estate,

Opposite Shakti Mills, Mumbai-400013

.....Resulting /Transferee Company

JUDGMENT/ORDER DILIVERED ON 27.10.2017

CORAM: Sh. Harihar Prakash Chaturvedi, Member (Judicial)

For the Petitioner : Sh. J. Nagar, Adv, Prateek.J.Nagar, Adv

For the Central Government : Sh. M.K. Bagri, OL

PER: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

Order / Judgement

1. The Present Company Petition is filed by the Petitioner Company before this tribunal under Section 230/232 of Companies Act, 2013 read with National Company Law Tribunal Rules, 2016 along with The Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 seeking for sanctioning of the Proposed Scheme of Amalgamation between *M/S*

GANGETIC HOTELS PVT.LTD., (hereinafter referred to as *Petitioner/Transferor Company*) as amalgamating with **M/S PALLADIUM CONSTRUCTIONS PVT.LTD.,** (hereinafter referred to as *Resulting/Transferee Company*).

2. It is submitted in the Company Petition that the Proposed Company Scheme of Amalgamation has previously been approved by the Board of Directors and Shareholders of the Petitioner Companies in the meeting dated **11.01.2017** convened by their respective Board of Directors.
3. It is also informed that the Proposed Company Scheme of Amalgamation has also been Sanctioned and Approved on behalf of Transferee Company by the Hon'ble NCLT Mumbai Bench in CSP No-434/2017 by order dated 20.07.2017
4. **The salient feature of the Proposed Company Scheme:**


The salient feature of the Proposed Company Scheme of Amalgamation provides certain provision to secure the Interest of the Company and its shareholders, creditors, stakeholders and the employee which can be stated as under:

- (a) All the assets and labilities of the subsidiary Transferor Company(s) will be transferred to and vest with the Transferee Company.
- (b) The Scheme of amalgamation shall take effect from 1st April,2016 or such other date, as the Tribunal may approve.
- (c) All the employees of the Transferor Company shall become employee of the Transferee Company without any change in their respective service condition and with their continuity of service.
- (d) That subsequent to the date of the audited accounts for the year ended on 31.03.2016, there has been no substantial change in the financial position of the Transferor Company except those arising or resulting from normal

course of business. The petitioners undertake to comply with the Accounting Standard-14 issued by the Institute of Chartered Accountants of India to the instant Scheme.

- (e) That the Transferor Companies and the Transferee Company have accordingly, arrived at the proposed Scheme of Amalgamation/Merger with effect from 1st of April, 2016 Certified Copy of Transferor Company and the Transferee Company are annexed with Company Application No.79/ALD/2017. A true copy of the Scheme of Amalgamation has been annexed with the Present Petition.
- (f) That the meetings of the Board of Directors of the Transferor Companies as well as of the Transferee Company having been duly approved the proposed Scheme of Amalgamation, which includes the share exchange ratio have been determined by Nayyar Maniar & Associates LLP, Chartered Accountants. A copy of the Share Valuation report is annexed with present petition/ application.
- (g) That the Transferor Company is a subsidiary of the Transferee Company by virtue of Section 2(87) of the Companies Act, 2013 and no further shares shall be issued by the Transferee Company, as it cannot issue any shares to itself, henceforth, all the Equity Shares, held by the Transferee Company and its nominees, if any, in the Transferor Companies shall be treated as cancelled and share certificates extinguished, accordingly, there will be no issue and allotment of Equity Shares of the Transferee Company to the Shareholders of the Transferor Companies upon this Scheme becomes effective.

5. As per the Proposed Company Scheme annexed with the Present Petition the *Appointed Date* of the scheme is **01.04.2016**, and the Share Exchange Ratio is further stated as under: -



1(One) equity shares of Palladium Constructions Private Limited having face value of INR 10(Rupee Ten Only) each fully paid for every 12(Twelve) equity shares of Gangetic Hotels Private Limited having face value of INR 10 (Rupee Ten Only) each fully paid-up.

6. It is submitted that the Proposed Scheme of Amalgamation is not intended in any manner, to have any beneficial effect on the managerial interest, if any, of the Directors of the Petitioner Company, except to the extent of their shareholdings. That the Proposed Scheme will not adversely affect the rights or interest of any creditor and debenture holders of the Petitioner Company or their respective shareholders, in any manner whatsoever.
7. It is also stated that the Proposed Scheme of Amalgamation does not involve in any compromise with the creditors and debenture holders of the Petitioner Company in any manner whatsoever. As such, the Scheme of Amalgamation does not in any manner adversely affect the interests of any creditor and debenture holder of the Petitioner Company. Further adequate provisions are made in the Company Scheme for payment of all their liabilities as and when the same would fall due in its usual course.

It is also reported that the Transferee Company has duly complied with the all accounting standards applicable there to.

8. A perusal of the Present Company Petition shows that the Petitioner Company earlier filed the First Stage Motion Petition before this Bench of NCLT bearing Company Application (C.A No. 79/ALD/2017) and had earlier sought some directions from this Tribunal for dispensing with the meetings of its shareholders, secured and unsecured creditor. This Bench through its order dated 14.08.2017 allowed such prayer of Amalgamating Company by dispensing with meetings of their Shareholders, Secured and Unsecured Creditors.



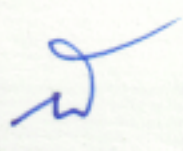
9. In addition to the above, this Tribunal earlier directed the Petitioner Company for issue of notice to the Central Government through the office of Regional Director (Northern Region), Ministry of Corporate Affairs, the Registrar of Companies, Kanpur and the Official Liquidator, Allahabad and to make paper publication in English and Hindi version of Newspaper.

In Compliance of such direction, the authorised representative of the applicant Companies has filed an affidavit of service confirming the publication of notice of present Company Petition in English and Hindi version of 'Pioneer' Lucknow Edition. The Petitioners have dully served notices of the present Company Petition to the Central Government through the Office of Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi and Registrar of Companies, U.P at Kanpur.

10. In response to the above notices issued, the Registrar of Companies, Kanpur filed its report, before this Tribunal reporting such there is no prosecution filed against Transferor Company nor any proceeding under Sections 235 to 251 of the Act, 1956 is pending neither any kind of violation under the Sections 383A/215 of the Companies Act, 1956 is reported for the Transferor Company.

In Addition to the above, Shri S.B Gautam, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, having obtained a report from the Registrar of Companies also filed his Representation Affidavit before this Tribunal stating that his Office is having no objections to present Company scheme as there are no prosecution/ proceedings pending against the Transferor Company and its Directors for any alleged violation of laws such as the Companies Act, FEMA, IPC, SEBI Act, RBI Act before any Court.

It is already recorded in preceding para of the Judgement, that the Present Proposed Company Scheme has already been approved and sanctioned



by the NCLT Mumbai Bench vide its order dated 20.07.2017 in **CSP No-434/2017** as filed by the Transferee Company.

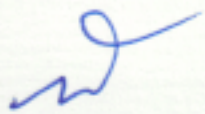
11. In the present matter Official Liquidator, Allahabad also submitted his report, mentioning about detail particulars of Authorized, Issued, Subscribed and Paid up Capital of the Transferor and Transferee Company as on 31/03/2016.

As per para 11 of the OL's report it is informed that under the provisions of section 230-232 of the Companies Act, 2013, his office is required to scrutinize the Books of Accounts and other documents of the Transferor Company for preparation and submission of a report. Pursuant, thereto Ms. Yashi Singh being Authorized representative / Company Secretary of Transferor Company dully produced Books of Accounts and statutory records, before the Official Liquidator, Allahabad.

After making scrutiny there of The Official Liquidator report's such the affairs of the Transferor Company have not been conducted in manner prejudicial to the interest of its members or to the interest of the public at large. Further in para 14 of its report it is informed that the Office of the OL, Allahabad is having no objection for dissolution of the transferor Company without being wound up pursuant to provisions of Section 230-232 of the Companies Act, 2013 and rules made there under.

Further the Board of Directors of the Transferor Company and Transferee Company have considered and approved the proposed Company Scheme. That apart the shareholders secured and unsecured creditors both have given their consent to and expressed their objection for Approval of the Company Scheme.

12. We have gone through the above stated averments made in the Company Petition and perused the documents annexed therewith, we further perused



carefully the Representation Affidavit of the RD(N.R.) along with Report of ROC and O.L filed in the present case. We examined the Merits of Present Company Petition and proposed Company scheme of Amalgamation in the light of Judicial Trend as settled by the High Court's that *the Court must examine the scheme on its own merits and is not bound to treat the scheme as fait accompli. It is well-settled that in exercising its discretion in according sanction, the court will consider, first, whether the statutory provisions have been complied with; secondly, whether the classes were fairly represented by those who attended the meeting and whether the statutory majority were acting bona fide, and, thirdly, whether the scheme is such as a man of business would reasonably approve. Bearing in mind these principles, the scheme may be examined.*

Further a Court is required to consider circumstances before giving its approval. Some of the outstanding circumstances may be illustrated as under:

- a. The proposal for the Scheme was made in good faith;
- b. The Scheme is fair and reasonable;
- c. The Scheme will yield to smooth and satisfactory working;
- d. The Scheme does not offend public or commercial morality;
- e. The Scheme is not detrimental to the interests of the creditors or members or public interest.

In the light of above discussion, we duly considered the Merits of the Proposed Company Scheme. we feel the proposed scheme does not seem to be contrary to the public policy, nor prejudicial to its shareholders and detrimental to public at large. Further in the light of the above given factual position of the Companies as well as of the proposed scheme, all the Statutory compliance either seems to have been complied with or, has been undertaken for necessary compliance as per undertaking given by the Transferor Company in its Supplementary Affidavit.

Therefore, the proposed Company Scheme, seems to be reasonable and fair, in conformity with statutory provisions. Hence deserve for approval. Consequently, the Present Company petition must succeed and is hereby allowed in terms of Prayer Clause and the Company Scheme of Arrangement/amalgamation annexed to the present Company Petition is accordingly sanctioned, and to be acted upon by the Petitioner Companies as per the terms and condition contained therein.

13. Consequent upon approval and sanction of the Present Company Scheme, all the property, rights and powers and transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of Act, be transferred to and vested in the Transferee Company for all intents and interest of the Transferor Company.
14. All the liabilities of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company.
15. Notwithstanding the above while sanctioning the above company scheme, we make it clear that this order should not be meant for an order in any way to grant exemption from payment of stamp duty, taxes. Statutory charges or other payment in accordance with law or in respect to any relaxation, compliance with any other requirement which may be specifically required under the law.
16. That Petitioner Company shall within thirty days of the date of the receipt of copy of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration. The Transferor Company on such certified copy being so delivered, shall deemed to be dissolved. The Registrar of Companies shall place all documents relating to the Transferor Company



and registered with him on file kept by him in relation to the Transferor Company and to be consolidated accordingly.

17. Further a cost of Rs. 25,000/- is awarded in favour of the Central Government through the office of the Registrar of Companies (Kanpur), Regional Director (N.R.) as the case may be towards Legal Expenses incurred which is payable by the Petitioner companies within four weeks from the receipt of an authentic copy of this order.

18. The Petitioner counsel to furnish a copy of draft order of sanction of the Scheme in the prescribed format under Companies Compromises, Arrangement and Amalgamations) Rules, 2016 read with other rules for scrutiny and authentication to be made by the Registry of this Tribunal.

19. All Concerned Regulatory Authorities may act on an Authentic copy of this order annexed with the sanctioned Company Scheme as authenticated by the Registry of this Tribunal.

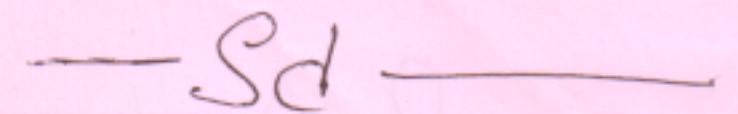
20. The Present Company Petition stands disposed of Accordingly.

Dated- 27/10/2017

Typed by

Aman Kumar Dwivedi

Law Research Associate



H.P. Chaturvedi

Member (Judicial)